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STATE OF WASHINGTON  
ETHICS ADVISORY COMMITTEE  
OPINION 14-03

Question

May a judicial officer serve as the Superior Court judge in a one-judge, multi-county district if the spouse of the judicial officer is elected to the position of Superior Court clerk in one of the counties in the judicial district?

The judicial officer is a part-time District Court judge and a Superior Court commissioner in a one-judge, multi-county Superior Court district. The judicial officer's spouse is the Chief Deputy Superior Court clerk in one of the counties of the district. The judicial officer's spouse intends to run for the office of Superior Court clerk in that county in the 2014 elections.

The judicial officer intends to run for the Superior Court judge position, or seek appointment if an opening were to occur prior to the end of the term, in the multi-county district.

Answer

CJC 1.2 provides that a judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety. CJC 2.3(A) states that a judge shall perform administrative duties without bias or prejudice. CJC 2.4(B) provides in relevant part that a judge shall not permit family to influence judicial conduct or judgment. CJC 2.12(A) provides in relevant part that a judge shall require court staff, court officials, and others subject to the judge's direction and control to act with fidelity and in a diligent manner consistent with the judge's obligation under the Code.

RCW 2.32.050 sets forth the powers and duties of Superior Court clerks. The statute says a clerk has a duty, "[i]n the performance of his or her [other] duties to conform to the direction of the court." RCW 2.32.050(9).

Finally, GR 29 addresses the role of presiding judges. GR 29(b) provides that the judge serving a one-judge district shall serve as the presiding judge. GR 29(e) and (f) describe the general responsibilities, duties, and authority of the presiding judge. The commentary to GR 29(f) addresses situations where a Superior Court clerk's office is under the direction of an elected county clerk: "In those cases where the presiding judge is not responsible for the management of the clerk's office, the presiding judge should communicate to the county clerk any concerns regarding the performance of statutory court duties by county clerk personnel."

The Code of Judicial Conduct does not prohibit a person from serving as a Superior Court judge, or even a presiding judge, just because the person's spouse is the elected county clerk in one of the counties in the judicial district. In fact, Comment [5] to CJC 4.1(a)(3) acknowledges that members of a judicial officer's family are free to engage in their own political activities, including running for public office.

Nevertheless, to promote ongoing fidelity to the Code, care should be exercised in a situation involving a presiding judge and a spouse who is the county clerk for the same court. The duties of both the county clerk (RCW 2.32.050) and a presiding judge in a judicial district (GR 29) are set out in statutes and court rules. A presiding judge should consider developing a protocol with the county clerk for ensuring that those duties are carried out in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, avoids the appearance of impropriety, promotes the unbiased performance of administrative duties, and avoids family influence of judicial conduct and judgment. (See CJC 1.2, 2.2, 2.3, 2.4, and 2.12).

Also see Opinions 05-09, 99-12 and 86-13.